

# House Daily Reader

# Wednesday, January 26, 2000

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# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

718D0286

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1060** - 1/24/00

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise the standards of review for findings of fact.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 15-6-52(a) be amended to read as follows:

4 15-6-52(a). In all actions tried upon the facts without a jury or with an advisory jury, the  
5 court shall, unless waived as provided in § 15-6-52(b), find the facts specially and state  
6 separately its conclusions of law thereon, and judgment shall be entered pursuant to § 15-6-58;  
7 ~~and in.~~ In granting or refusing temporary restraining orders or preliminary injunctions, the court  
8 shall similarly set forth the findings of fact and conclusions of law which constitute the grounds  
9 of its action. Findings of fact ~~shall, whether based on oral or documentary evidence, may~~ not be  
10 set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial  
11 court to judge of the credibility of the witnesses. The findings of a referee, to the extent that the  
12 court adopts them, shall be considered as the findings of the court. Findings of fact and  
13 conclusions of law need not be made ~~when~~ if a temporary restraining order or preliminary  
14 injunction is entered in an action arising under chapters 25-3 and 25-4.

15 A copy of the proposed findings shall be served upon the attorneys of record to the action  
16 or upon the parties of record to the action ~~when~~ if not represented by counsel. The court may

1 direct counsel for the prevailing party to prepare findings; and counsel shall, within ten days after  
2 announcement of decision, unless otherwise ordered, prepare, serve, and submit to the court with  
3 copies to opposing counsel, proposed written findings of fact and conclusions of law together  
4 with the proposed judgment or decree.

5 The court ~~shall~~ may not sign any findings therein prior to the expiration of five days after  
6 service of the proposed findings during which time the parties may in writing submit to the court  
7 and serve on their adversaries their objections or additional proposals. Thereafter the court shall  
8 make or enter such findings and conclusions as may be proper.

9 Any action or decision of the court in making or modifying findings of fact or conclusions  
10 of law shall be deemed excepted to, but the failure of the court to make a finding or conclusion  
11 on a material issue ~~shall~~ is not to be deemed excepted to unless such finding or conclusion has  
12 been proposed to or requested from the court.

13 If an opinion or memorandum of decision is filed, the facts and legal conclusions stated  
14 therein need not be restated but may be included in the findings of fact and conclusions of law  
15 by reference.

16 Findings of fact and conclusions of law are unnecessary on decisions of motions under  
17 § 15-6-12 or 15-6-56 or any other motion except as provided in § 15-6-41(b).

1    **BILL HISTORY**

2    1/14/00 First read in House and referred to Judiciary. H.J. 46

3    1/24/00 Scheduled for Committee hearing on this date.

4    1/24/00 Judiciary Do Pass Amended, Passed, AYES 10, NAYS 2. H.J. 191

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

925D0305

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1064** - 1/24/00

Introduced by: Representatives Hennies, Brooks, Brown (Richard), Duniphan, Fitzgerald, Lintz, McCoy, McIntyre, Munson (Donald), and Wilson and Senators Ham, Albers, Brosz, Lawler, Madden, Reedy, Shoener, Staggers, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the procurement,  
2 collection, filing, and analysis of biological specimens from persons convicted of crimes of  
3 violence.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 23-5-14 be amended to read as follows:

6 23-5-14. The attorney general shall procure and file for record genetic marker grouping  
7 analysis information from any person convicted of a ~~violation of the provisions of chapter 22-22.~~  
8 ~~The attorney general also shall procure and file for record such genetic marker grouping analysis~~  
9 ~~information of any person confined in any workhouse, jail, reformatory, penitentiary or other~~  
10 ~~penal institution or otherwise under supervision for a violation of the provisions of chapter 22-22~~  
11 sex crime pursuant to chapter 22-22 or a crime of violence as defined in § 22-1-2. The attorney  
12 general also shall cooperate with and assist corrections officers, sheriffs, chiefs of police, and  
13 other law enforcement officers to the end that a complete state system of genetic marker  
14 grouping analysis information may be established. ~~Sheriffs, chiefs of police, and any other law~~  
15 ~~enforcement officers of the state~~ The Department of Corrections, immediately upon the

1 ~~conviction~~ attaining custody of any person for a ~~violation of the provisions of chapter 22-22~~  
2 conviction of a crime of violence as defined in § 22-1-2 or a conviction of a sex crime pursuant  
3 to chapter 22-22, shall arrange for collection of ~~blood and saliva~~ biological specimens for genetic  
4 marker grouping analysis according to the system established by the Division of Criminal  
5 Investigation and, ~~upon the person's conviction~~, shall forward any such specimen to the division  
6 for classification and filing. If the court does not sentence a person convicted of a sex crime  
7 pursuant to chapter 22-22 or a person convicted of a crime of violence as defined in § 22-1-2 to  
8 the Department of Corrections, the court shall order the convicted person to immediately report  
9 to a law enforcement agency for the collection of a biological specimen for genetic grouping  
10 analysis.

11 Section 2. That § 23-5-16 be amended to read as follows:

12 23-5-16. The Division of Criminal Investigation shall provide equipment and instructions as  
13 necessary for collection of ~~blood and saliva~~ biological specimens pursuant to this chapter. Such  
14 collection of specimens shall be performed in a medically approved manner. Only a physician,  
15 laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role  
16 licensed practical nurse, medical technician, or medical technologist may withdraw blood ~~or~~  
17 ~~saliva~~ for the purpose of genetic marker grouping analysis. Other persons, such as corrections  
18 officers or law enforcement officers, after being trained, may withdraw an alternative biological  
19 specimen in accordance with a procedure provided by the Division of Criminal Investigation. The  
20 Office of the Attorney General shall promulgate rules, pursuant to chapter 1-26, to identify the  
21 types of biological specimens which, based on evidentiary value, may be procured and the  
22 procedures by which the biological specimens may be procured. Any such authorized person,  
23 acting on the presumption of consent, or any hospital employing such person, is not liable and  
24 may not be held to pay damages to the party from whom the ~~blood or saliva~~ biological sample  
25 is withdrawn, if the withdrawal is administered with usual and ordinary care. Any such specimen

1 shall be forwarded to the Division of Criminal Investigation for analysis and categorization into  
2 genetic marker groupings. Such genetic marker groupings shall be maintained by the Division  
3 of Criminal Investigation. The division may contract with private entities for such specimen  
4 analysis and categorization.

1    **BILL HISTORY**

2    1/14/00 First read in House and referred to Judiciary. H.J. 47

3    1/19/00 Scheduled for Committee hearing on this date.

4    1/21/00 Scheduled for Committee hearing on this date.

5    1/21/00 Judiciary Do Pass Amended, Passed, AYES 11, NAYS 2. H.J. 188



# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

562D0533

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1097** - 1/24/00

Introduced by: Representatives McCoy, Brooks, Fitzgerald, and Roe and Senators Olson,  
Albers, and Drake

1 FOR AN ACT ENTITLED, An Act to require sellers of tobacco and alcohol to retain the age-  
2 bearing documents of persons suspected of misrepresenting their age for the purpose of  
3 purchasing those products and to require community service of those who misrepresent their  
4 ages for the purpose of purchasing tobacco and alcohol.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 No person may misrepresent that person's age with the use of any document for the purpose  
9 of purchasing or attempting to purchase tobacco products. A violation of this section is a Class  
10 2 misdemeanor. In addition to any other penalty, a person convicted of a violation of this section  
11 may perform community service as ordered by the judge.

12 Section 2. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Any seller of tobacco products who has reason to believe that a person has misrepresented  
15 that person's age by use of any document for the purpose of purchasing or attempting to  
16 purchase tobacco products may retain the document and surrender it to a law enforcement

1 officer.

2 Section 3. That § 35-9-2 be amended to read as follows:

3 35-9-2. It is a Class 2 misdemeanor for any person under the age of twenty-one years to  
4 purchase, attempt to purchase, or possess or consume alcoholic beverages except when  
5 consumed in a religious ceremony and given to said person by an authorized person, or to  
6 misrepresent ~~his~~ that person's age with the use of any document for the purpose of purchasing  
7 or attempting to purchase alcoholic beverages from any licensee licensed under this title. In  
8 addition to any other penalty, any person who is convicted of misrepresentation of that person's  
9 age may perform community service as ordered by the judge.

10 Section 4. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Any seller of alcoholic beverages who has reason to believe that a person has misrepresented  
13 that person's age by use of any document for the purpose of purchasing or attempting to  
14 purchase alcoholic beverages may retain the document and surrender it to a law enforcement  
15 officer.

1    **BILL HISTORY**

2    1/15/00 First read in House and referred to committee assignment waived. H.J. 59

3    1/18/00 Referred to Judiciary. H.J. 120

4    1/21/00 Scheduled for Committee hearing on this date.

5    1/21/00 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 4. H.J. 189

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

643D0453

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB1100** - 1/24/00

Introduced by: Representatives Michels, Brown (Jarvis), Fischer-Clemens, Hunt, Koehn, McIntyre, Slaughter, Wilson, and Young and Senators Everist, Daugaard, Dunn (Rebecca), Flowers, and Moore

1 FOR AN ACT ENTITLED, An Act to allow certain nurses to form limited liability partnerships  
2 and limited liability companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 48-7-111 be amended to read as follows:

5 48-7-111. Any person registered, certified, or licensed pursuant to chapter 16-16, 36-4, 36-  
6 4A, 36-5, 36-6A, 36-7, 36-8, 36-9, 36-9A, 36-10, 36-12, or 36-20A may practice in a limited  
7 liability partnership.

8 Section 2. That § 47-11E-1 be amended to read as follows:

9 47-11E-1. One or more registered nurses, licensed practical nurses, certified registered nurse  
10 anesthetists, or clinical nurse specialists licensed pursuant to chapter 36-9 or nurse ~~practitioner~~  
11 practitioners or nurse ~~midwife~~ midwives licensed pursuant to chapter 36-9A may form a  
12 professional service ~~corporations~~ corporation for the practice of nursing under the South Dakota  
13 Business Corporation Act. The articles of incorporation of ~~such corporations~~ the corporation  
14 shall contain provisions complying with the requirements of §§ 47-11E-1 to 47-11E-19,  
15 inclusive.

Registered nurses, licensed practical nurses, certified registered nurse anesthetists, or clinical nurse specialists licensed pursuant to chapter 36-9 or nurse practitioners or nurse midwives licensed pursuant to chapter 36-9A may form a professional limited liability company under the South Dakota Limited Liability Company Act if the limited liability company is organized and operated in accordance with the provisions of this chapter. The articles of organization of the limited liability company shall contain provisions complying with the requirements of §§ 47-11E-1 to 47-11E-19, inclusive.

Section 3. That chapter 47-11E be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this chapter shall also include the following terms:

- (1) "Articles of incorporation," the articles of organization of a limited liability company;
- (2) "Corporation," both corporations under the South Dakota Business Corporations Act and limited liability companies under the South Dakota Limited Liability Company Act;
- (3) "Director" or "officer," any manager of a limited liability company or the members of a limited liability company that does not have managers;
- (4) "Incorporation," the members of a limited liability company;
- (5) "Shareholders," the members of a limited liability company;
- (6) "Shares" or "stock," membership interests in a limited liability company.

Section 4. That § 47-11E-4 be amended to read as follows:

47-11E-4. The name of a corporation formed pursuant to § 47-11E-1 shall contain the words, "professional company" or "professional corporation" or abbreviations thereof, such as "Prof. Co.," or "Prof. Corp." or "P.C." The name of a limited liability company formed under § 47-11E-1 shall contain the words, professional limited liability company, or the abbreviation, Prof. L.L.C. The name of the corporation or limited liability company shall always meet the

1 ethical standards established for the names of nursing firms by the canons of professional ethics  
2 of the South Dakota Board of Nursing as if all of the stockholders of the corporation were  
3 partners.

4 Section 5. That § 47-11D-1 be amended to read as follows:

5 47-11D-1. One or more physician assistants may form a professional corporation for  
6 practicing as physician's assistants under the South Dakota Business Corporation Act, if such  
7 corporations are organized and operated in accordance with the provisions of this chapter.

8 Physician assistants may form a professional limited liability company under the South  
9 Dakota Limited Liability Company Act if the limited liability company is organized and operated  
10 in accordance with the provisions of this chapter. The articles of organization of the limited  
11 liability company shall contain provisions complying with the requirements of this chapter.

12 Section 6. That chapter 47-11D be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 Terms used in this chapter shall also include the following terms:

- 15 (1) "Articles of incorporation," the articles of organization of a limited liability company;
- 16 (2) "Corporation," both corporations under the South Dakota Business Corporations Act  
17 and limited liability companies under the South Dakota Limited Liability Company  
18 Act;
- 19 (3) "Director" or "officer," any manager of a limited liability company or the members of  
20 a limited liability company that does not have managers;
- 21 (4) "Incorporation," the members of a limited liability company;
- 22 (5) "Shareholders," the members of a limited liability company;
- 23 (6) "Shares" or "stock," membership interests in a limited liability company.

24 Section 7. That § 47-11D-2 be amended to read as follows:

25 47-11D-2. The ~~corporate~~ name of a corporation shall contain the words, "professional

1 company" or "professional corporation", or abbreviations thereof, such as "Prof. Co.," "Prof.  
2 Corp.," "P.C.," or "Prof. Ltd." The name of a limited liability company formed under § 47-11D-1  
3 shall contain the words, professional limited liability company, or the abbreviation, Prof. L.L.C.

1    **BILL HISTORY**

2    1/15/00 First read in House and referred to committee assignment waived. H.J. 60

3    1/18/00 Referred to Judiciary. H.J. 120

4    1/21/00 Scheduled for Committee hearing on this date.

5    1/21/00 Judiciary Do Pass Amended, Passed, AYES 11, NAYS 0. H.J. 189



# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

463D0549

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1101** - 1/24/00

Introduced by: Representatives Michels, Apa, Chicoine, Duniphan, Engbrecht, Hennies, Koehn, McCoy, Napoli, Sutton (Duane), and Wilson and Senators Olson, Everist, Hutmacher, Munson (David), Reedy, Shoener, and Staggers

1 FOR AN ACT ENTITLED, An Act to revise the grounds for revocation or suspension of an  
2 alcoholic beverage license.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 35-2 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 No retail license may be revoked or suspended because of a violation of any statute,  
7 ordinance, rule, or regulation prohibiting the sale or service of any alcoholic beverage to a person  
8 under the age of twenty-one years if the violation was committed by an employee or agent of the  
9 licensee and:

10 (1) The licensee did not see the violation occur;

11 (2) The employee or agent has been certified by a nationally recognized training program  
12 approved by the Department of Revenue that provides instruction on techniques to  
13 prevent persons under the age of twenty-one years from purchasing or consuming  
14 alcoholic beverages;

15 (3) The licensee has a written policy requiring the licensee's employees or agents to

- 1           examine the driver's license or other age-bearing identification document of any  
2           person who appears to be under the age of twenty-one years before selling or serving  
3           any alcoholic beverage to that person, and the employee or agent has agreed in  
4           writing to abide by the policy; and
- 5       (4)   The employee or agent has not been convicted of a similar violation within the past  
6           twelve months.

1    **BILL HISTORY**

2    1/15/00 First read in House and referred to committee assignment waived. H.J. 60

3    1/18/00 Referred to State Affairs. H.J. 120

4    1/21/00 Scheduled for Committee hearing on this date.

5    1/24/00 Scheduled for Committee hearing on this date.

6    1/24/00 State Affairs Do Pass Amended, Passed, AYES 0, NAYS 0. H.J. 191

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

995D0418

## HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB1103** - 1/24/00

Introduced by: Representatives Garnos, McCoy, McIntyre, Monroe, and Roe

1 FOR AN ACT ENTITLED, An Act to allow state employees to use two days of personal leave  
2 as voluntary community service leave.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 3-6 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any employee with the State of South Dakota may use up to two days of personal leave in  
7 each calendar year as community service leave. Community service, as used in this Act, means  
8 service that benefits the general public through nonprofit agencies, governmental agencies, and  
9 educational institutions for which the employee does not otherwise receive compensation.  
10 Community service leave may be denied if the employee's workload is such that the employee  
11 cannot be spared at that time. Unused community service leave may not accrue to another year.  
12 The commissioner of the bureau of personnel shall promulgate rules to implement reporting or  
13 verification mechanisms for community service leave.

1    **BILL HISTORY**

2    1/18/00 First read in House and referred to committee assignment waived. H.J. 112

3    1/19/00 Referred to State Affairs.

4    1/24/00 Scheduled for Committee hearing on this date.

5    1/24/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 192